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A PLACE FOR MOM, INC.  
6  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

10 DARYL BURSCH, an Individual,  
11 Plaintiff,  
12 v.  
13 A PLACE FOR MOM, INC.; and  
DOES 1 through 100, inclusive,  
14 Defendants.  
15  
16  
17  
18  
19

Case No.

**NOTICE TO FEDERAL COURT OF  
REMOVAL OF CIVIL ACTION  
FROM STATE COURT PURSUANT  
TO 28 U.S.C. SECTIONS 1332, 1441  
AND 1446**

*[Filed concurrently with the Declaration  
of Nicole McConnell, Corporate  
Disclosure Statement; Notice of Related  
Cases; Civil Case Cover Sheet]*

Complaint Filed: May 16, 2022  
(Riverside County Superior Court,  
Case No. CVSW2203290)

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND PLAINTIFF**  
2 **DARYL BURSCH AND HIS ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that Defendant A Place For Mom, Inc. (“APFM”)  
4 hereby removes the above-entitled action, Case No. CVSW2203290, from the Superior  
5 Court of the State of California, County of Riverside, to the United States District Court  
6 for the Central District of California, pursuant to 28 U.S.C. sections 1332, 1441 and  
7 1446.

8 This Notice is based upon the original jurisdiction of the federal district court  
9 over the parties under 28 U.S.C. section 1332 (“Section 1332”) because the parties are  
10 of diverse citizenship and the matter in controversy exceeds, exclusive of interest and  
11 costs, the sum specified by 28 U.S.C. section 1332.

12 APFM makes the following allegations in support of its Notice of Removal:

13 **JURISDICTION [LOCAL RULE 8-1]**

14 1. This Court has original jurisdiction under 28 U.S.C. section 1332(a)(1),  
15 and this case may be removed pursuant to the provisions of 28 U.S.C. section 1441(a),  
16 because it is a civil action wherein the amount in controversy exceeds seventy-five  
17 thousand dollars (\$75,000.00), exclusive of interest and costs, and it is between  
18 “citizens of different States.”

19 2. As set forth below, this case meets all of Section 1331 and 1332’s  
20 requirements for removal and is timely and properly removed by the filing of this  
21 Notice.

22 3. Venue is proper in this Court pursuant to 28 U.S.C. sections 84(c), 1391  
23 and 1446. Plaintiff originally brought the State Court Action in the Superior Court of  
24 the State of California, County of Riverside.

25 **PLEADINGS, PROCESS AND ORDERS**

26 4. This lawsuit arises out of Plaintiff Daryl Bursch’s (“Plaintiff”)  
27 employment with APFM. On May 16, 2022, Plaintiff filed a Complaint (the  
28 “Complaint”) in the Superior Court of the State of California, County of Riverside, titled

1 *DARYL BURSCH v. A PLACE FOR MOM, INC.*; Case No. CVSW2203290 (the “State  
 2 Court Action”). The Complaint asserts the following six causes of action: (1) Unpaid  
 3 Overtime Wages; (2) Missed Meal Breaks; (3) Missed Rest Breaks; (4) Improper Wage  
 4 Statements; (5) Waiting Time Penalties; and (6) Unfair Competition – Bus. & Prof.  
 5 Code § 17200.

6 5. On August 8, 2022, Plaintiff personally served APFM, through its  
 7 corporate agent, with copies of the Summons and Complaint, and corresponding  
 8 documents consisting of the Civil Case Cover Sheet, Certificate of Counsel, Notice of  
 9 Department Assignment, and Alternative Dispute Resolution (ADR) – Information  
 10 Package. Attached hereto as **Exhibit A** is a true and correct copy of the Summons and  
 11 Complaint, and the corresponding documents described in this paragraph.

12 6. On September 6, 2022, APFM filed its Answer to Plaintiff’s Complaint.  
 13 Attached hereto as **Exhibit B** is a true and correct copy of APFM’s Answer.

14 7. Pursuant to 28 U.S.C. section 1446(a), the documents attached hereto  
 15 constitute all process, pleadings, and orders filed and served upon APFM in this action.

#### 16 **TIMELINESS OF REMOVAL**

17 8. Plaintiff caused the Summons and Complaint to be served on APFM  
 18 through its corporate agent on August 8, 2022. Pursuant to 28 U.S.C. section 1446(b),  
 19 this Notice of Removal is therefore timely filed as it is filed within thirty (30) days after  
 20 APFM was effectively served with the Summons and Complaint and within one year  
 21 after commencement of this action.

#### 22 **DIVERSITY JURISDICTION PURSUANT TO 28 U.S.C. §1332**

23 9. Section 1332(a) provides: “The district courts shall have original  
 24 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value  
 25 of \$75,000, exclusive of interest and costs, and is between. . . (1) citizens of different  
 26 States[.]” This action is a civil action over which this Court has original jurisdiction  
 27 based on diversity of citizenship pursuant to Section 1332(a), and may be removed to  
 28 this Court by APFM pursuant to 28 U.S.C. section 1441(b) because it is a civil action

1 between citizens of different states and the amount in controversy exceeds \$75,000,  
2 exclusive of interest and costs, as set forth below.

3 10. Plaintiff is a Citizen of California. To establish citizenship for diversity  
4 purposes, a natural person must be a citizen of the United States and domiciled in a  
5 particular state. *Bank of N.Y. Mellon v. Nersesian*, 2013 WL 8284799, at \*7 (C.D. Cal.  
6 2013) (citing *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
7 1983)). Persons are domiciled in the places they reside with the intent to remain or to  
8 which they intend to return. *Nersesian*, 2013 WL 8284799, at \*7 (citing *Kanter v.*  
9 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Residence is *prima facie*  
10 evidence of one's domicile. *Sadeh v. Safeco Ins. Co.*, 2012 WL 10759737, at \*4 (C.D.  
11 Cal. 2012) (citing *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir.  
12 1994)). Plaintiff alleges that he is an individual and a resident of the County of  
13 Riverside in the State of California. (**Exhibit A**, Compl., ¶ 1.) Thus, Plaintiff is a  
14 citizen of California.

15 11. APFM is NOT a Citizen of California. For diversity jurisdiction purposes,  
16 a corporation is deemed a citizen of its state of incorporation and the state or foreign  
17 state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). A  
18 corporation's principal place of business is "the place where the corporation's high level  
19 officers direct, control, and coordinate the corporation's activities," *i.e.*, its "nerve  
20 center," which is typically a corporation's headquarters. *Hertz Corp. v. Friend*, 559  
21 U.S.77; 130 S. Ct. 1181, 1186; 175 L. Ed. 2d 1029, 1034 (2010).

22 12. APFM is a corporation incorporated and existing under the laws of the  
23 state of Delaware and its corporate headquarters is located in the state of New York.  
24 (Declaration of Nicole McConnell ("McConnell Decl.") ¶ 3.) At the time the Complaint  
25 was filed, APFM's corporate headquarters was and still is in New York City, NY. (*Id.*)  
26 APFM's high level officers direct, control, and coordinate the Company's corporate and  
27 business activities from New York City, NY. (*Id.*) Thus, APFM's principal place of  
28 business is New York City, NY, and APFM is a citizen of New York for purposes of

1 diversity.

2 13. The Complaint names as defendants “DOES 1 through 10.” Pursuant to  
3 28 U.S.C. section 1441(a), however, the citizenship of defendants sued under fictitious  
4 names must be disregarded for the purpose of determining diversity jurisdiction. *See*  
5 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

6 14. Therefore, since APFM is not a citizen of the forum State, i.e., California,  
7 complete diversity exists for purposes of 28 U.S.C. § 1332. *See Lincoln Prop. Co. v.*  
8 *Roche*, 546 U.S. 81, 84 (2005).

9 15. As discussed in detail below, the amount in controversy in the Complaint  
10 exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest  
11 and costs, as required by Section 1332 (a).

12 **THE AMOUNT IN CONTROVERSY REQUIREMENT IS MET**

13 16. The Complaint does not indicate an amount of damages claimed;  
14 consequently, APFM need only show by a preponderance of the evidence (more-  
15 probable-than-not) that Plaintiff’s claimed damages exceed the jurisdictional minimum.  
16 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Although  
17 APFM expressly denies any liability for the damages alleged in Plaintiff’s Complaint,  
18 for purposes of determining whether the minimum amount in controversy has been  
19 satisfied, the Court must presume that Plaintiff will prevail on each and every one of  
20 his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d  
21 993, 1001 (C.D. Cal. 2002). The ultimate inquiry is what amount is put “in controversy”  
22 by Plaintiff’s Complaint, not the amount, if any, that APFM will actually owe. *Rippee*  
23 *v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005).

24 17. The Complaint and the Prayer for Relief contained therein clearly  
25 demonstrate that the amount in controversy does, in fact, exceed \$75,000. Plaintiff’s  
26 Complaint alleges various claims for unpaid wages, overtime wages, and unpaid meal  
27 and rest breaks premiums, and penalties. (*See Complaint.*) The Introduction section of  
28 Plaintiff’s Complaint alleges that “for at least the last four (4) years of his employment,

1 Defendant coerced him to work off the clock and forego legally mandated meal and rest  
2 periods.” (Compl. at 1.) Although APFM denies the validity and merit of Plaintiff’s  
3 claims and the underlying allegations, and further denies that Plaintiff is entitled to any  
4 relief, Plaintiff’s allegations establish an amount in controversy in excess of the  
5 jurisdictional minimum of \$75,000, exclusive of interest and costs, as set forth below.

6 18. Plaintiff began working for APFM in 2014 as a Senior Living Advisor, and  
7 his employment ended in or about October 31, 2021. (Compl., ¶ 11; McConnell Decl.,  
8 ¶ 5.) As of that date, Plaintiff’s regular rate of pay was \$22.84 per hour. (*Id.*) Plaintiff  
9 contends that for at least the last four years of his employment, “Defendants began to  
10 aggressively enforce a sales quota-scheme which became the standard by which  
11 Plaintiff’s work performance was measured” and that he needed to reach his quota by  
12 “by any means necessary” or he would be terminated. (Compl., ¶¶ 12, 14.) Thus,  
13 Plaintiff alleges that he “regularly worked off the clock hours at 10-25+ hours above a  
14 40-hour work week.” (Compl., ¶ 15.) Further, “[i]n many instances, Plaintiff’s  
15 manager expected and required Plaintiff to clock hours seven days per week, and  
16 worked through rest and meal breaks with no intention of paying overtime.” (Compl.,  
17 ¶ 16.) The statute of limitations for Plaintiff’s claims for failure to overtime wages is  
18 three years (*see* Cal. Code Civ. Proc. § 338), but may be extended to 4 years under  
19 California’s unfair competition law. Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
20 Assuming that Plaintiff worked an average of 17.5 hours of overtime off the clock  
21 spanning over the course of 4 years, the amount Plaintiff is allegedly owed would be  
22 calculated at **\$124,706.40** (\$34.26/hour (OT rate) x 17.5 hours/week x 208 weeks). As  
23 a result, even calculating *only* unpaid overtime wages, Plaintiff potentially could  
24 recover well over the \$75,000 threshold.

25 19. Plaintiff also contends that he was discouraged from taking meal breaks  
26 and the “timecard reports reveal numerous instances of time entries showing that meal  
27 breaks were often not taken or accounted for in Plaintiff’s time.” (Compl., ¶ 25.)  
28 Plaintiff further contends that he was not “provided rest periods during his employment

with Defendants.” (Compl., ¶ 28.) As such, under California law, Plaintiff would be owed one hour of premium pay at his regular rate for each day a proper meal period and rest period were not provided. Cal. Lab. Code § 226.7. The statute of limitations for Plaintiff’s claims for failure to provide compliant meal and/or rest breaks is three years (*see* Cal. Code Civ. Proc. § 338), but is extended to 4 years under California’s unfair competition law. Bus. & Prof. Code §§ 17200, *et seq.* *Conservatively* assuming Plaintiff worked 6 days per week based on his allegations (*see* Compl., ¶ 16) and was not provided a meal or rest break 50% of the time, the amount Plaintiff is allegedly owed for premium pay for missed meal and rest breaks would be calculated at **\$28,504.32**.<sup>1</sup>

20. Plaintiff also contends that he was not provided accurate wage statements in violation of Labor Code section 226 because “Defendants underreported and under recorded the actual number of hours worked and overtime hours per pay period. (Compl., ¶ 30.) The statute of limitations applicable to Plaintiff’s claim is one year. *See* Cal. Code Civ. Proc. § 340(a). The statutory penalty is:

the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) [in addition to] an award of costs and reasonable attorneys’ fees.

Cal. Lab. Code § 226(e)(1). Plaintiff was paid bi-weekly and there are 13 pay periods between May 16, 2021 (the beginning of the statute of limitations period) and October 31, 2021 (Plaintiff’s termination date). (McConnell Decl., ¶¶ 5-6.) Thus, the amount of controversy for this claim is **\$1,250.00**, exclusive of costs and attorneys’ fees.

21. Plaintiff also seeks attorneys’ fees. (Compl., ¶¶ 21, 26, 29, 32, 37; Prayer for Relief ¶ 7.) It is well-settled that when authorized by statute, attorneys’ fees are to

<sup>1</sup> 312 days worked per year (6 days x 52 weeks) x 0.5 (non-compliant meal or rest periods) = 156 days allegedly denied compliant meal and rest periods. 156 days x 4 years x \$22.84 (hourly rate) = \$28,504.32



1 be included in the calculation of the amount of Plaintiff's claims for purposes of  
 2 determining whether the requisite jurisdictional minimum is met. *Galt G/S v. JSS*  
 3 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying statute  
 4 authorizes an award of attorneys’ fees, either with mandatory or discretionary language,  
 5 such fees may be included in the amount in controversy”); *Brady v. Mercedes-Benz*  
 6 *USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (stating that in deciding the  
 7 amount in controversy issue, the court may estimate the amount of reasonable attorneys’  
 8 fees likely to be recovered by plaintiff if she were to prevail). Any estimate of attorney’s  
 9 fees includes fees over the life of the case, not just the fees incurred at the time of  
 10 removal. *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 795-96  
 11 (9th Cir. 2018). Although Plaintiff’s attorneys’ fees cannot be precisely calculated, it is  
 12 reasonable to assume they could exceed a damages award. *Simmons*, 209 F. Supp. 2d  
 13 at 1035; *See, e.g., Lippold v. Godiva Chocolatier, Inc.*, No. C 10-00421 SI, 2010 WL  
 14 1526441, at \*4 (N.D. Cal. 2010) (denying plaintiff’s motion to remand by finding that  
 15 the anticipated attorneys’ fees were sufficient to exceed the \$75,000 threshold where  
 16 plaintiff’s wage and hour claims totaled only \$38,747). Plaintiff’s demand for attorneys’  
 17 fees further increases the amount in controversy above the \$75,000 threshold.

18 22. Plaintiff also seeks such open-ended relief “[f]or such other and further  
 19 relief as the Court deems just and proper.” (Compl., Prayer for Relief, ¶ 9.) Although  
 20 uncertain in amount, these additional damages claims only serve to increase the amount  
 21 in controversy. *See Lewis v. Exxon Mobil Corp.*, 348 F. Supp. 2d 932, 932-934 (W.D.  
 22 Tenn. 2004) (“open ended” relief sought by plaintiff, who prayed for “judgment to be  
 23 determined by a jury, for all incidental, consequential, compensatory and punitive  
 24 damages” established that her case met amount in controversy requirement even though  
 25 she plead in the complaint that she did not assert claim in excess of \$75,000.)

26 23. Based upon the pleadings, it does not appear to a “legal certainty that the  
 27 claim is really for less than” the amount in controversy minimum. *Spielman v. Genzyme*  
 28 *Corp.*, 251 F.3d 1, 5 (1st Cir. 2001) (quoting *St. Paul Mercury Indem. Co. v. Red Cab*



1 Co., 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). Although APFM does  
2 not concede Plaintiff's claims have any merit, APFM has more than carried its burden  
3 of demonstrating by a preponderance of the evidence that the amount in controversy in  
4 this matter clearly exceeds the jurisdictional minimum of \$75,000.00. For these  
5 reasons, this action is a civil action over which this Court has original jurisdiction  
6 pursuant to Section 1332, and which may be removed by APFM to this Court pursuant  
7 to 28 U.S.C. section 1441 based on diversity jurisdiction.

8 **NOTICE TO STATE COURT AND PLAINTIFF**

9 24. Concurrently with the filing of this Notice of Removal in the United States  
10 District Court for the Central District of California, written notice of such filing will be  
11 given by the undersigned to counsel for Plaintiff, Nathan R. Klein of the Law Offices  
12 of Tyler & Bursch, LLP. In addition, a copy of this Notice of Removal will be filed  
13 with the Clerk of the Superior Court of the State of California for the County of  
14 Riverside.

15  
16 Dated: September 7, 2022

17  
18 /s/ James P. Van  
19 TRACY R. WILLIAMS  
JAMES P. VAN  
LITTLER MENDELSON, P.C.

20 Attorneys for Defendant  
21 A PLACE FOR MOM, INC.  
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**PROOF OF SERVICE BY MAIL**

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 18565 Jamboree Road, Suite 800, Irvine, California 92612. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On September 7, 2022, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**NOTICE TO FEDERAL COURT OF REMOVAL OF  
CIVIL ACTION FROM STATE COURT PURSUANT  
TO 28 U.S.C. SECTIONS 1332, 1441 AND 1446**

in a sealed envelope, postage fully paid, addressed as follows:

TYLER & BURSCH, LLP  
Nathan R. Klein (SBN 306268)  
nklein@tylerbursch.com  
25026 Las Brisas Road  
Murrieta, California 92562  
Phone: (951) 600-2733  
Email: talmond@tylerbursch.com

*Attorneys for Plaintiff*  
*Daryl Bursch*

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 7, 2022, at Irvine, California.

  
Cecilia Mendoza